

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PAULA F. SOTO,)
Plaintiff,)
v.) C.A. No.13-10822
CITY OF CAMBRIDGE,)
Defendant.)
)

**DEFENDANT CITY OF CAMBRIDGE'S
MOTION TO STAY**

Defendant, City of Cambridge (the "City") respectfully requests that the Court stay this action pending the Cambridge City Council's (the "Council") review of City Ordinance, § 9.04.050 (the "Ordinance") which is the subject of the above-captioned matter. In support of this request, the City states the following:

1. This action is a constitutional challenge to provisions of the Ordinance both as applied and on its face.
2. The Council, as the legislative body of the City, has the authority to promulgate, amend and rescind the ordinances of the City.
3. Amendments to the Ordinance were presented to the Council on March 2, 2015 (see attached proposed amendments attached as Exhibit "A"). The Council voted to refer the proposed amendments to the Ordinance to the Council's Ordinance Committee.
4. The current deadline for the filing of motions for summary judgment in the present action is set for Monday, March 16, 2015.

5. Should the Council decide to adopt the proposed amendments to the Ordinance, it is possible this action will be rendered moot.
6. Continuing to litigate a matter that ultimately may be rendered moot is wasteful of the Court's time and would incur needless costs to the parties. The Court's stay of this matter would temporarily preclude the parties from filing non-emergency motions (including summary judgment motions) or other pleadings with the Court until the expiration of the stay.

WHEREFORE, the City respectfully requests that this Honorable Court:

- A. stay this action for two months to conserve the Court's and the parties' resources and to allow time for the City Council's Ordinance Committee and the City Council itself to consider the proposed Amendments to the Ordinance; and,
- B. schedule a conference with the parties after the City Council has concluded its review of the proposed amendments, or in two months' time, whichever comes first.

Respectfully submitted,

s/ Samuel A. Aylesworth
Samuel A. Aylesworth (BBO #645057)
Asst. City Solicitor
Law Department – City Hall
795 Massachusetts Avenue
Cambridge, MA 02139
(617) 349-4121
saylesworth@cambridgema.gov

Dated: March 13, 2015

*Counsel for Defendant City of
Cambridge*

CERTIFICATE OF SERVICE

I, Samuel A. Aylesworth, hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 13th day of March 2015.

s/ Samuel A. Aylesworth

EXHIBIT “A”

City of Cambridge

Richard C. Rossi • City Manager



Executive Department

Lisa C. Peterson • Deputy City Manager

City Hall • 795 Massachusetts Avenue • Cambridge • Massachusetts • 02139
617-349-4300 • fax: 617-349-4307 • tty: 617-492-0235 • www.cambridge_ma.gov

March 2, 2015

To the Honorable, the City Council:

Attached for your consideration are proposed amendments to City of Cambridge Ordinance Chapter 9.04 "Offenses Against Property."

The proposed amendments would serve to clarify the applicability of the Ordinance. Specifically Amendment No. 1 would remove the applicability of private property owner consent from the operation of this section of the Ordinance. Amendment No. 2 would create a new section entitled "Illegally Attaching Commercial Notices to Private Property." This section would expressly prohibit the posting of commercial materials to any private property, including motor vehicles, without the consent of the private property owner. The Ordinance would also clarify that the provisions of the Ordinance apply to motor vehicles.

Very truly yours,

Richard C. Rossi
City Manager

RCR/mec
Attachment

MAR 13 2015

CERTIFIED COPY

Donna P. Lopez
City Clerk

**CITY MANAGER AGENDA
CITY COUNCIL MEETING OF MONDAY, MARCH 2, 2015**

<p>5. Transmitting communication from Richard C. Rossi, City Manager, relative to the City of Cambridge retaining the noteworthy distinction of being one of approximately 34 municipalities in the United States with three AAA ratings from the nation's three major credit rating agencies. <i>CMA 2015 #85</i></p> <p>6. Transmitting communication from Richard C. Rossi, City Manager, relative to proposed amendments to City of Cambridge Ordinance Chapter 9.04 "Offenses Against Property." <i>CMA 2015 #86</i></p>	<p>5. PLACED ON FILE</p> <p>6. REFERRED TO THE COMMITTEE FOR ORDINANCE</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------

MAR 13 2015

CERTIFIED COPY

Donna P. Lopez
Pitts, Clark

Proposed amendments to City of Cambridge Ordinance
Chapter 9.04 "Offenses Against Property"

Amendment No. 1:

Section 9.04.050(A) is hereby amended after the words "public property" by inserting the phrase "including without limitations motor vehicles" and by deleting the final clause which reads "or on private property without the consent of the owner or occupant thereof."

Amendment No. 2:

Chapter 9.04 is further amended by inserting the following new section 9.04.051 "Attaching Commercial Notices to Private Property Not Allowed":

- A. No person shall post or attach, or directly cause to be posted or attached in any manner, any commercial handbill, poster, advertisement or notice of any kind on any private property including without limitations motor vehicles without the consent of the owner or occupant thereof.
- B. Any person who violates this section shall be subject to a fine of three hundred dollars. Each illegally posted notice, advertisement, poster or sign shall be considered a separate violation of this section, and a separate offense shall be deemed committed on each day during or on which a violation of this section occurs or continues.
- C. As an alternative to the penalty set forth in subsection B, whoever violates any provision of this section shall be penalized by a noncriminal disposition as provided for in G.L. c. 40, §21D. For purposes of this section, the following officials shall be enforcing persons: Cambridge Police Officers and designated staff of the Cambridge Department of Public Works and the Inspectional Services Department.

The noncriminal penalty for the first violation of this section shall be twenty-five dollars; for the second violation, one hundred dollars; and for the third and all subsequent violations, two hundred dollars.

MAR 13 2015

CERTIFIED COPY

Donna P. Lopez
City Clerk

9.04.050 - Defacing public property.

A. No person shall post or attach, or directly or indirectly cause to be posted or attached in any manner, any handbill, poster, advertisement or notice of any kind on public property including without limitations motor vehicles except by permission of the City Manager or his designee, or on private property without the consent of the owner or occupant thereof.

B. Any handbill or sign found posted or otherwise affixed on any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works or the Inspectional Services Department.

C. The person or persons responsible for causing the unlawful posting of any notice described herein will be liable for the cost of removal and for the penalties described below. Persons liable under this section include, but are not limited to, any individual, corporation, partnership or other organization whose advertisement, message or information appears on the unlawfully posted notice.

D. Any person who violates this section shall be subject to a fine of three hundred dollars. Each illegally posted notice, advertisement, poster or sign shall be considered a separate violation of this section, and a separate offense shall be deemed committed on each day during or on which a violation of this section occurs or continues.

E. As an alternative to the penalty set forth in subsection D, whoever violates any provision of this section shall be penalized by a noncriminal disposition as provided in G.L., c. 40, §21D. For purposes of this section, the following officials shall be enforcing persons: Cambridge Police Officers and designated staff of the Cambridge Department of Public Works and the Inspectional Services Department.

Then noncriminal penalty for the first violation of this section shall be twenty-five dollars; for the second violation, one hundred dollars; and for the third and all subsequent violations, two hundred dollars.

9.04.051 - Attaching Commercial Notices to Private Property Not Allowed:

A. No person shall post or attach, or directly cause to be posted or attached in any manner, any commercial handbill, poster, advertisement or notice of any kind on any private property including without limitations motor vehicles without the consent of the owner or occupant thereof.

B. Any person who violates this section shall be subject to a fine of three hundred dollars. Each illegally posted notice, advertisement, poster or sign shall be considered a separate violation of this section, and a separate offense shall be deemed committed on each day during or on which a violation of this section occurs or continues.

MAR 13 2015

CERTIFIED COPY

*Denise P. Healey
City Clerk*

C. As an alternative to the penalty set forth in subsection B, whoever violates any provision of this section shall be penalized by a noncriminal disposition as provided for in G.L. c. 40, §21D. For purposes of this section, the following officials shall be enforcing persons: Cambridge Police Officers and designated staff of the Cambridge Department of Public Works and the Inspectional Services Department.

The noncriminal penalty for the first violation of this section shall be twenty-five dollars; for the second violation, one hundred dollars; and for the third and all subsequent violations, two hundred dollars.

MAR 13 2015

CERTIFIED COPY

Donna P. Lopez
City Clerk